IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 601 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GANGADHAR YASHVANTRAO RAMEKAR

Versus

GIRDHARI CHANDIRAM KHEMANI

Appearance:

1. Criminal Appeal No. 601 of 1991

(MR GN DESAI) for Petitioner No. 1

MR MANISH UPADHYAY for MR PRANAV G DESAI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

MR AY KOGJE APP for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 05/02/2003

ORAL JUDGEMENT

#. The appellant-original complainant, Shri Gangadhar Yashvantrao Ramekar, Food Inspector of Vadodara Municipal Corporation has filed this appeal against the judgment and order of acquittal dated 27.11.1989 passed by the learned JMFC, Vadodara in Criminal Case No.4701/83 filed against the respondent-accused acquitting the accused for the offence under Sections 7 and 16 of the Prevention of Food Adulteration Act, 1954 (for short "the Act"). Though served no one is appearing for the respondent-accused. Therefore, this matter is disposed of after hearing learned counsel Shri Manish Upadhyay for Shri Pranav Desai for appellant and Mr.A.Y.Kogje appearing for respondent No.2.

#. In the instant case, the complainant-Food Inspector took the sample of turmeric powder from the shop of the respondent No.1 on 12.5.1983 at 9.00 a.m. After completing the formalities he sent it to the Public Analyst for his report on the same day i.e. on 12th May, 1983. Within nine days thereof, the sample was analyzed by the Public Analyst vide report Ex.37/1. Public Analyst was of the opinion that the sample does not conform to the provisions of Prevention of Food Adulteration Act and rules. On receiving the said report from the Public Analyst, the complainant submitted his letter obtaining sanction to the sanctioning authority i.e. Legal Health Authority (L.H.A.) by his letter dated 25.5.1983 (Ex.34). Surprisingly, sanctioning authority in a great hurry without application of mind accorded its sanction on the same day i.e. on 25.5.1983 (Ex.35) and forwarded the same to the complainant on the same day. On receiving the said sanction, the complainant, in a great hurry as if heaven was going to fall, filed complaint before the court of learned Magistrate on the same day i.e. on 25.5.1983 which runs into 4 typed pages. On the next day the said complaint was sworn and the learned Magistrate issued process on 26.5.1983.

#. After considering the evidence of the complainant and the defence of the accused learned Magistrate acquitted the accused on several grounds as he was of the opinion that sanction was defective and that the bottle in which the sample was taken was not clean.

#. Public Analyst in his report Ex.37/1 (page No.71 of the paper book) opined that the sample of turmeric powder was not in conformity with the provisions of P.F.A.Act and rules. I would like to reproduce the relevant portion of his report more particularly the result of analysis, which is as under :-

Moisture : 6.8%
Total Ash : 7.77%
Ash insoluble in HCL : 2.35%
Total Starch : 49.0%
Lead chromate Test : Negative
Colour : Coal tar dye absent
Microscopy : Foreign starch absent

#. Except Ash insoluble in HCL it was found to be 2.35% as against required standard of 1.5% all other ingredients were in accordance with the provisions of the Act and the rules. There is a marginal difference of 0.85% in Ash insoluble in HCL. The public analyst has not at all opined in his report that how the sample was not in confirmity. It clearly appears from letter addressed by the complainant to the sanctioning authority i.e. L.H.A. for sanction and the sanction order itself that neither complainant nor the sanctioning authority at all applied their mind that how the sample of turmeric powder was not in confirmity to the provisions of the Act or the rules. It clearly appears that mechanically the complainant has asked for the sanction in a great hurry and without application of mind the sanctioning authority accorded the sanction on the said day. The learned Magistrate found that the sanction was not in accordance with law, therefore, the learned Magistrate has acquitted the accused. It is a different thing that the learned Magistrate has not considered the above aspect on the ground mentioned hereinabove the order of acquittal is required to be confirmed.

#. When the learned Magistrate found that the bottle in which the sample of turmeric power collected was not found to be clean at the time of taking sample, then this court would be slow in interfering with the order of acquittal passed by the Trial Court. More particularly, after a lapse of period of almost 20 years of commission of the alleged offence.

#. In view of the above discussion, this appeal fails and is hereby dismissed.

(B.J.Shethna, J.)
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